ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended;	)	
	)	
and	)	CC Docket No. 96-149
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

REPLY COMMENTS OF BELL ATLANTIC

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SUMMARY AND INTRODUCTION

An integral part of the benefits that the 1996 Act was intended to provide was the provisions to "enhance competition in the long-distance industry by freeing the seven Bell operating companies to offer interLATA long-distance service."[1] In particular, the Act was intended to allow the Bell companies to jointly market local and authorized long distance services in order to "offer the same one-stop shopping alternatives that long distance companies can offer."[2]

Despite the clear provisions of the Act that would effectuate these goals, the long distance industry seeks to undermine the law and asks the Commission to interpret the Act in such a way that would frustrate competition and thereby preserve their preeminence through government regulation. The Commission should reject such arguments which hurt both competition and consumers.

Bell companies should not be encumbered with new separation requirements not contemplated in the Act. In particular, it is inconsistent with the Act and Commission precedent to require the costly duplication of administrative services. The Commission should not adopt regulations that would undermine the clear statutory right for either the Bell company or its section 272 affiliate to market and sell long distance and local services together. The Commission should also reject long distance incumbents' arguments for rules that go beyond the

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1 House Debate of conference Report S. 652, remarks of Hon. Rick Boucher, Virginia, 142 Cong. Rec. H1145-06, H 1159 (Feb. 1, 1996).

2 Remarks of Hon. Mike Ward, Kentucky, 141 Cong. Rec. E1913-02, E1913 (Oct. 11, 1995).

Act's restriction against unfair discrimination, and instead limit the ability of a Bell company or its affiliate to compete fairly.

In addition, the Commission should reject long distance incumbents' attempt to extend the definition of interLATA information services to include services that have no interLATA component performed by the Bell company. There is also no reason to extend the section 272 rules to cover electronic publishing service, which are specifically addressed elsewhere in the Act.

In fact, as Bell Atlantic explained in its initial comments, section 272 is sufficient -- both in its scope and in its detail -- as to obviate any need for ***any*** supplemental regulation by the Commission. The Commission should, however, move quickly toward regulatory parity by authorizing nondominant regulation for Bell company long distance affiliates.

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REPLY COMMENTS OF BELL ATLANTIC[3]

The long distance incumbents urge the Commission to adopt a wide variety of regulations that would artificially raise Bell Operating Companies' ("BOCs'") cost of doing business, to use regulatory controls to limit the competing products that BOCs may offer, and to otherwise restrict any competitive challenge to their cozy oligopoly. Such restrictions serve no legitimate regulatory need, but merely serve to impede competition and to hurt consumers. The Commission should reject these claims. Instead, it should rely on the safeguards in the Act and otherwise allow BOC affiliates to compete on the same competitive footing as incumbents -- including regulating all competitors in the long distance market as nondominant.

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[3] This filing is on behalf of Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc., and Bell Atlantic Communications, Inc.

I. The Commission Should Not Create Unwarranted Separation Rules Not Found in the Act

Predictably, the long distance incumbents urge the Commission to further encumber the BOCs by creating new separation requirements in addition to those found in the Act. The Commission should reject their attempts to affix additional requirements not authorized by Congress.

Specifically, there is no basis for the various lists of rules that incumbents seek to layer onto the section 272(b)(1) "operate independently" requirement. As even AT&T concedes, sections 272(b)2) through (b)(4) are "specific injunctions that each represent a particular attribute of operational independence."[4] It simply makes no sense to assume that Congress intended to open the door to additional rules interpreting operational independence that would dwarf the specific rules in the Act.

For example, long distance incumbents suggest that the rules implementing section 272(b)(1) should include a ban on the affiliate using the LEC's brand name.[5] Such a ban is simply inconsistent with the specific provision of the Act that authorizes the LEC and its affiliate to engage in joint marketing.[6] In addition, it is inconsistent with the Act's treatment of the same issue elsewhere. For example, in the section 274 separation requirements for electronic publishing, Congress used a similar structure of a general "operate independently" requirement, followed by the specific rules intended to effectuate that mandate. In section 274, Congress

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4 Comments of AT&T Corp. at 19 (filed Aug. 15, 1996) ("AT&T").

5 Comments of Competitive Telecommunications Association at 14-17 (filed Aug. 15, 1996) ("CompTel").

6 47 U.S.C. § 272(g).

specifically imposed very circumscribed limits on the use of certain BOC names and trademarks by the non-regulated affiliate.[7] Based on the language common to the two sections, it makes no sense to suggest that Congress would feel the need to include a specific requirement in one section and in the other would rely on the FCC to promulgate rules to create a far more onerous requirement based on the common general language.[8]

The long distance incumbents would also expand the intended meaning of the ban on common employees in section 272(b)(3) to exceed the scope of restrictions imposed by the Commission in the Computer II rules.[9] As Bell Atlantic explained in its initial comments, such an approach is directly inconsistent with both the explicit language and the structure of the Act.[10]

In particular, the long distance incumbents would ban the BOC or its centralized staff affiliate from providing administrative services to the section 272 affiliate -- despite the fact that the affiliate would pay more than its fair share of the cost under the Commission's affiliate transaction rules. Not only does such a restriction have no support in the statute, it flies in the face of the Commission's own precedent. Sixteen years ago, the Commission found that the burden of such a restriction and the benefit to consumers of permitting administrative services to

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7 47 U.S.C. § 274 (b)(6). In fact, under the section 274 rules the affiliate is specifically authorized to use the brand name owned or controlled by the parent of the BOC.

8 Similarly, MCI argues that a ban on the BOC providing training for personnel of the affiliate is subsumed in the operate independently requirement. Comments of MCI Telecommunications Corporation at 27 (filed Aug. 15, 1996) ("MCI"). But here too, such a rule is specifically included in section 274 and excluded in section 272. ***See*** 47 U.S.C. § 274(b)(7)(A).

9 ***See, e.g.***, MCI Comments at 27-28; AT&T Comments at 24-26; CompTel Comments at 19-20.

10 Comments of Bell Atlantic at 9 (filed Aug. 15, 1996) ("Bell Atlantic").

be shared, outweighed any legitimate concern.[11] Since then, with a history of compliance by the BOCs and added safeguards such as price cap regulation now in place, the balance has moved even more decisively against imposing such artificial regulatory costs on the BOCs.[12]

Nonetheless, CompTel argues that the facts here merit a change from the policy decision made in Computer II. First, it argues that the BOC should not be permitted to provide administrative services to its section 272 affiliate because the availability of unbundled network elements will somehow allow the affiliate to share the BOC's economies of scale.[13] But the unbundled elements have nothing to do with the administrative services that otherwise would have to be duplicated by the section 272 affiliate. Second, while the Commission previously found that the lower costs benefited competition, CompTel makes the self-serving argument that the addition of BOC competition in the long distance market brings no added benefit.[14] But the Commission and Congress have concluded otherwise.[15] Ultimately, CompTel concedes that the "costs and benefits ... have already been weighed in this situation by Congress."[16] CompTel is right -- in section 272(b)(3) of the Act, Congress only barred common employees and in no way blocked an affiliate's purchase of services from a BOC, including administrative services.

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11 ***Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)***, 77 F.C.C. 2d 384, 484 (1980).

12 ***See*** Bell Atlantic Comments at 2-3.

13 CompTel Comments at 19

14 ***Id.***

15 ***Policy and Rules Concerning the Interstate, Interexchange Market Place; Implementation of Section 254(g) of the Communications Act of 1934, as amended***, CC Docket No. 96-61, NPRM (rel. March 25, 1996) at 3.

16 CompTel Comments at 19-20.

MCI would also expand the reach of section 272(b)(4) to block a BOC holding company from obtaining credit based on BOC assets.[17] The statute, however, only deals with limitations on the activities of the 272 affiliate, and in no way can reach the relationship between the BOC and its holding company. Moreover, a less efficient structure could increase BOC and holding company costs, and ultimately the cost to consumers. This type of restriction serves no one except competitors of the BOC like MCI.

II. Joint Marketing Benefits Consumers and is Permitted Under the Act

1. Section 272(g) allows joint marketing

The terms of the 1996 Act expressly allow the BOC, the 272 affiliate, or both to market and sell a combination of local and long distance service.[18] As the legislative history makes clear, the Act was intended to allow the Bell companies to "offer the same one-stop shopping alternatives that long distance companies can offer."[19]

Notwithstanding the explicit provisions of the Act, the long distance incumbents and their allies urge the Commission to effectively ban joint marketing. For example, MFS (which recently announced merger with the fourth largest incumbent, WorldCom) would ignore the Act altogether and forbid "joint marketing," "joint advertising" or "customer referrals."[20] These are

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17 MCI Comments at 29.

18 47 U.S.C. § 272 (g)(1) and (2). Clearly if either the BOC itself or the 272 affiliate can offer a combination of local and long distance service, such a service can also be offered through an affiliate other than a separate section 272 affiliate.

19 Remarks of Hon. Mike Ward, Kentucky, 141 Cong. Rec. E1913-02, E1913 (Oct. 11, 1995).

20 Comments of MFS Communications Company, Inc. at 15 (filed Aug. 15, 1996) ("MFS").

all integral components of joint "sales and marketing" permitted under the Act. Similarly, CompTel would impose the same limitations that were placed on the experimental Ameritech plan that was approved in the absence of the Act, without regard to the opening of the local network mandated in sections 251 and 271, and without regard to the requirements of section 272. These restrictions would prevent a BOC employee from even advising an existing customer that the "BOC or its affiliate provides interexchange service," much less allowing joint marketing and sales.[21] These types of draconian limitations on joint marketing were explicitly rejected by the Act. Indeed, just to ensure that there would be no confusion on that point, the Act clarifies that joint marketing does not violate the non-discrimination requirements.

In addition, the incumbents argue that, to the extent that one-stop shopping is allowed, section 272(b) separations rules require that the affiliate use an unaffiliated third party to make such offers. As even Sprint recognizes, this cannot be required by the Act.[22] Joint marketing is specifically permissible through the BOC or its 272 affiliate.

The long distance incumbents also would undercut the ability of the BOCs to effectively market their services in other ways. For example, long distance incumbents argue that BOCs or their affiliates should not be allowed to offer bundled packages of local and long distance services at a discount. Given that the joint marketing entity (whether BOC, 272 affiliate or other) must pay same rates for the BOC's regulated services as are available to unaffiliated third parties to put together the bundled package, no competitor can be put at an unfair cost disadvantage. Indeed, under the resale requirements of section 251, interexchange carriers can buy local service

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21 Comments of the CompTel at 25.

22 Sprint Comments at 49 ("statute does not require" use of outside marketing entity).

at a discount from tariffed rates and create their own competitive packages at a lower cost. As a result, it is the BOC that is at a cost disadvantage for bundled offerings.

Some incumbents argue that the right to jointly market disappears when a customer makes inbound calls to the BOC.[23] But this is exactly where joint marketing is most important. If a BOC cannot provide a single source for a customer to call to satisfy all telecommunications needs -- both local and long distance -- the concept of one-stop shopping is illusory. Arguments against allowing joint marketing to inbound customers are inconsistent with the policy reflected elsewhere in the Act. For example, even in Section 274, where joint marketing with a separate electronic publishing affiliate is limited, there is a specific allowance for "inbound telemarketing or referral services."[24] And if inbound services are permitted even where joint marketing ***is*** limited, the they must certainly are permitted where it is ***not***. In short, Congress simply did not intend for a long distance incumbent to be able to address any customer request on an inbound call, while a BOC sales channel would be denied that same opportunity.

AT&T would require a three month notice period before a 272 affiliate could market or sell long distance together with local. A built-in delay serves no regulatory purpose. AT&T is not subject to an equivalent delay. Indeed, the three month lag provides competitors opportunity to launch preemptive marketing to which, under AT&T's proposed rules, the BOC could not respond until the waiting period was over. Such a one-sided rule hurts consumers by limiting their ability to get market information from all participants.

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[23] For example, AT&T argues that pre-Act equal access requirements somehow override the specific joint marketing authorization in the Act. AT&T Comments at 57-58.

[24] 47 U.S.C. § 274(c)(2)(A). Likewise, in section 222, there is a limited exception to restrictions on the use of customer proprietary network information when it is used on inbound telemarketing or referrals, "if such call was initiated by the customer." 47 U.S.C. § 222(d)(3).

2. Joint marketing will benefit consumers

Beyond the requirements of the Act, the Commission has recognized the market importance and consumer benefits of offering one-stop shopping to consumers of telecommunications services. The Commission has found "substantial" consumer benefits for one-stop shopping and recognized that "one point of contact with a provider of multiple services is efficient" and avoids "customer confusion."[25] Moreover, the Commission has recognized that when regulations prevent a company from offering its customers one-stop shopping, the result is a "'stifling effect on efficiency, innovation, service ability'" which could "'hamper [the company's] ability to compete effectively in [a] market where its competitors are not subject to such separation requirements.'"[26] The obvious result of such a regulatory rule would be to give those companies that can provide one-stop shopping "an unfair competitive advantage,"[27] and ultimately would deny consumers the benefits of competition.

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[25] ***Applications of Craig O. McCaw, Transferor, and American Telephone and Telegraph Company, Transferee, for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and Its Subsidiaries***, 10 FCC Rcd. 11786, 795 (1995) ("McCaw"); ***accord Motion of Southwestern Bell Mobile Systems, Inc. For a Declaratory Ruling That Section 22.903 and Other Sections of the Commission's Rules Permit the Cellular Affiliate of a Bell Operating Company to Provide Competitive Landline Local Exchange Service Outside the Region in Which the Bell Operating Company is the Local Exchange Carrier***, 11 FCC Rcd 3386, 3395 (1995) (one-stop shopping "offers substantial benefits to consumers by avoiding duplicative costs, increasing efficiency, and enhancing [the company's] ability to provide innovative service.")

[26] ***Comsat Corp.***, File No. 136-SAT-DR-95, Memorandum Opinion and Order at ¶ 21 (Int. Bur. rel. May 13, 1996) (quoting ***Structural Relief Order***, 8 FCC Rcd at 1534 (quoting Comsat reply at iii)).

[27] ***AmericaTel Corporation Application for Transfer of Control And Pro Forma Assignment of Section 214 Authorizations***, 9 FCC Rcd 3993, 3996 (1994).

The Commission is right. Incumbents are already advertising their regulatory advantage in offering local, long distance and other services from a single source.[28] Their arguments here are an effort to maintain that advantage. In section 272(g), Congress clearly rejected continuation of such an artificial regulatory constraint. As the Senate report explains, Congress recognized that the "ability to bundle telecommunications, information and cable services into a single package to create 'one-stop-shopping' will be a significant competitive marketing tool."[29] As a result, "to provide for parity among competing industry sectors,"[30] the Act provides BOCs and their affiliates the right to offer bundled packages from a single source.

Despite the long distance incumbents' gloom and doom arguments for additional regulations, the Act is replete with safeguards that ensure no competitive harm can come from BOCs' one-stop service.[31] First, the BOC or its affiliate may not even offer long distance service until they have met the requirements of section 271 and opened their local market to competition. Second, the affiliate must obtain the BOC's services on "an arms length basis" and subject to the separation requirements of section 272(b). Even then, a section 272 affiliate cannot market local

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28 For example, in a recent full page advertisement, MCI trumpets its offering of local service and how MCI can now provide "the sort of efficiencies and economies that businesses here could never take advantage of before." Attached is a copy of the ad, which appeared in the New York Times at D3 (Aug. 7, 1996) (Attachment 1). Among the advantages MCI touts is the ability to get multiple services on one bill and multi-service volume discounts. These are exactly the type of services that MCI would seek to block the BOCs or their affiliates from offering in competition.

29 S. Rep. No. 23, 104th Cong., 1st Sess., Sec. 102 (1995).

30 ***Id.***

31 Indeed, these are the same types of gloom and doom arguments that accompanied BOC's fully integrated entry into the information services market -- a market that continues to be robustly competitive.

with long distance unless and until the BOC allows non-affiliated competitors the right to market or sell its local exchange service.[32]

3. Section 271(e)(1) limits joint marketing by large interexchange carriers

At the same time large long distance incumbents try to eliminate the statutory right of the BOCs to jointly market and sell once they obtain long distance relief, they also try to assume away the statutory prohibition against their own joint marketing prior to BOC entry into the market. But as the Commission itself has recognized, and as the legislative history makes clear, the pre-relief restrictions that apply to the BOCs and the incumbents are equivalent in scope.[33] As a result, if the BOCs are barred from specific activities, so are the incumbents.

For example, despite the clear prohibition in section 271(e)(1) on its own joint marketing, MCI argues that because it is a single company, it can produce joint advertisements and sell from a single source prior to removal of the ban.[34] But such an interpretation makes the ban meaningless. As the other competitors recognized, this prohibition must cover unified advertising, single source supply and service bundling.[35] It is these activities that give the customer the information and the ability to achieve one-stop shopping.

Moreover, AT&T is wrong that the ban does not cover marketing activities after the sale. The Act prohibits the large carriers from providing one-stop shopping during the period that

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32 47 U.S.C. § 272(g)(1).

33 Notice, ¶ 91. As the Senate report made clear, the restrictions on the large long distance carriers' joint marketing was intended to provide "parity" with the joint marketing authority of the BOCs. Senate Report on S. 652 (Report No. 104-230), Sec. 102 (Mar. 30, 1995).

34 MCI Comments at 45-46.

35 Comments of the Telecommunications Resellers Association at 18-19 (filed Aug. 15, 1996) ("TRA").

BOCs lack the same ability. As the Commission has recognized, the advantage to the incumbents of providing 'one-stop shopping' does not end at the time of sale. "If it is advantageous for a new customer to engage in one-stop shopping, it is likewise advantageous for an existing customer to do the same."[36] The ban on large incumbent joint marketing extends to post-sale services for their existing customers until BOCs have that same opportunity.[37]

III. The Act's Nondiscrimination Requirements Should Not Be Distorted into A Regulatory Market Advantage for Incumbents.

Long distance incumbents would twist the provisions of section 272(e) from a straightforward restriction against unfairly discriminating into a basis for adopting a variety of regulations that would prevent a BOC from competing fairly. Such self-serving proposals hurt competition and consumers and should be rejected.

For example, section 272(e)(1) requires that a BOC's response to requests for telephone exchange service from a non-affiliate be "no longer than" its time to respond to a request from a section 272 affiliate. AT&T would turn this clear requirement into a mandate that it and other incumbents are guaranteed ***faster*** service than an affiliated company. AT&T would accomplish this by ignoring average response time, and instead having the Commission mandate that any AT&T request to a BOC must be responded to at least as quickly as the fastest response made to an affiliate.[38] Thus rather than providing an incentive to provide all customers the fastest

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36 ***McCaw***, 10 FCC Rcd. at 11795.

37 Likewise, once BOCs begin joint marketing, they must be allowed to offer single source service to existing customers.

38 AT&T Comments at 36-37.

possible service, as the Act does, AT&T would require faster service for itself, and a guarantee of slower service to long distance customers of the BOC affiliate.

Similarly, AT&T would require that rather than charge itself a tariffed rate for access, as required by section 272(e)(3), a BOC affiliate must be charged the "highest unit price" paid by any interexchange carrier.[39] This means that the BOC affiliate could not take advantage of tariffed discounts that are made available to every other competitor. Ultimately, this ensures that a section 272 affiliate is put at a cost disadvantage relative to the interexchange incumbents. While such a rule would do much to discourage price-based competition to AT&T's benefit, it would serve no legitimate purpose and would only harm consumers by maintaining the status quo in the long distance market.

MCI would accomplish a similar result by requiring that a difference in the cost of a service used by a BOC affiliate would be insufficient to defend against a complaint based on the nondiscrimination requirement of section 272(c)(1).[40] Thus in MCI's model of long distance competition, even if the BOC affiliate purchases a ***different*** access service than a nonaffiliated company (even through that service was available to the nonaffiliated company),[41] and that service ***costs less*** than the service purchased by the unaffiliated company, the BOC would ***still*** be required to charge more, or risk losing a complaint proceeding. As a result, the incumbents would be guaranteed an artificial cost advantage over the new entrant BOC affiliates.

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39 ***Id.*** at 40.

40 MCI Comments at 56.

41 ***Id.*** at 36-37.

The long distance incumbents would also manipulate the discrimination rules to limit the ability of the BOC affiliate to get ***any*** service from the BOC. For example, while section 272(c)(1) prohibits discrimination, MCI would expand its plain meaning to prohibit the BOC from furnishing to its affiliate any services, facilities or information that is not actively sought and used by third parties.[42] Thus, even if a BOC offered a telecommunications service or facility on identical terms to all parties -- affiliated and unaffiliated alike -- the BOC would be guilty of discrimination if only an affiliate chose to purchase the service or facility. This is inconsistent with section 272 and with established Commission policy, which in areas like its ONA and CEI rules, have only required non-discriminatory availability.[43]

AT&T would go even further to distort the Act in order to gain an economic advantage. Under section 272(e)(4), a BOC "may provide ***any*** interLATA or intraLATA facilities or services to its interLATA affiliate." (emphasis added) Despite this express language, AT&T argues that this section only authorizes the BOC to provide services or facilities to the affiliate to use for incidental interLATA and other services that are exempted from section 272's separate affiliate requirement.[44] Thus, for those services for which a section 272 separate affiliate is required, AT&T would have the Commission rewrite the Act to mean that a BOC "may ***not*** provide" interLATA or intraLATA facilities or services. This is not only a complete repudiation of the Act, it is bad policy. Forcing the 272 affiliate to build a duplicate network (or buy from

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42 ***Id.*** at 37.

43 ***Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)***, 104 F.C.C.2d 958 (1985) at ¶147.

44 AT&T Comments at 42.

AT&T and its fellow incumbents) is inefficient and will only serve to drive up the cost, and ultimately the price for the competitive long distance offering to consumers.

Along similar lines, a number of long distance incumbents argue that in the provision of services and facilities to their 272 affiliates, BOCs may not rely on existing capacity including any available capacity on their official communication service ("OCS") network.[45] First, nowhere does the Act's express authorization to provide "any interLATA or intraLATA facilities" to a section 272 affiliate exclude existing facilities.[46] Second, there is no basis for such an exclusion. If the affiliate purchases such capacity, it must pay a compensatory price.[47] Moreover, the capacity must be made available to non-affiliated parties at the same rate charged to the affiliate.[48] Even BOC competitors acknowledge that "it would be economically inefficient not to allow" the use of existing facilities where possible.[49]

MCI argues that making the most efficient use of the network would create an incentive for the BOCs to create excess capacity at the expense of the regulated ratepayer.[50] This argument simply ignores the existence of price cap regulation. Price cap regulation does not allow the BOCs to raise rates for regulated services to recover the cost of such construction. To the

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45 ***See Id.*** at 45; MCI Comments at 24-25; ***see also*** Comments of the Association for Local Telecommunications Services at 5 (filed Aug. 15, 1996) ("ALTS") (stating that BOCs must show that non-affiliates using more than 10% of purchased OCS capacity).

46 ***See*** 47 U.S.C. § 272(e)(4).

47 47 U.S.C. § 272(b)(5)

48 47 U.S.C. § 272(e)(4).

49 ALTS Comments at 4.

50 MCI Comments at 24.

contrary, under price caps, Bell Atlantic and other local companies have reduced their interstate rates to reflect mandated adjustments for productivity growth.[51]

IV. A BOC Is Providing an InterLATA Information Service Only If the BOC Provides the Underlying InterLATA Transmission Service.

The 1996 Act defines an "interLATA service" as "telecommunications between a point located in a local access and transport area and a point located outside such area."[52] The term "telecommunications," in turn, "means the transmission, between or among points specified by the user, of information of the user's choosing."[53] Under this definition, only the provider of the interLATA transmission service -- ***i.e.***, the telecommunications provider who provides the link that crosses the LATA boundary -- is providing an interLATA service. Other entities that are involved in the end-to-end telecommunication, but whose facilities are confined to a single LATA, such as a local exchange carrier or its affiliate that provides exchange access or information access, are not providing an interLATA service.

Several parties argue that the location of the origination and termination points of the end-to-end communications that comprise the information service, not the location of an individual provider's facilities, dictates whether an information service is interLATA or intraLATA.[54] In other words, if a call were placed from LATA A to LATA B, forwarded to a

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51 ***See Price Cap Performance Review for Local Exchange Carriers***, 10 FCC Rcd 8961, 9069 (1995).

52 47 U.S.C. § 153(21).

53 47 U.S.C. § 153(43).

54 ***See, e.g.***, TRA Comments at 11-12, Sprint Comments at 18, Comments of the Information Technology Association of America at 9-10 (filed Aug. 15, 1996) ("ITAA").

voice messaging processor in LATA B, where it is retrieved, those parties would consider the voice messaging service to be an interLATA service, even though the telemessaging provider's service is confined to a single LATA. If these parties were correct, then any telecommunications service, including local exchange and exchange access service, that carries traffic that originates in one LATA and terminates in another, would be considered an interLATA service. Under that interpretation, the BOCs would be barred from offering ***any*** new exchange or exchange access service (***i.e.***, a service not grandfathered under Section 271(f)) until they obtain in-region interLATA relief under Section 271, because nearly every service carries interLATA traffic.

The Commission should, instead, define interLATA information services as those services that a ***BOC***[55] or its affiliate carries across LATA boundaries, either through its own facilities or via facilities that it leases and resells as its own. The BOC would be permitted, as it traditionally has, to provide the portion of an end-to-end information service that is physically confined within a LATA. Before the service leaves the LATA, however, it must be handed off to the BOC's separate interLATA affiliate or by an unaffiliated provider to provide the underlying transmission service to reach one or more LATAs.

This definition would be consistent with Congressional intent that services that the BOCs were lawfully providing before enactment of the 1996 Act should not be disrupted.[56] For example, Bell Atlantic currently provides voice messaging services to well over one million customers. Those services provide voice storage for all messages that a customer receives, whether they originate outside or within the customer's LATA. Such offerings were permitted

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55 The separate subsidiary requirement applies only to BOCs.

56 ***See*** 47 U.S.C. § 271(f).

without separate affiliates before enactment of the 1996 Act, and nothing in that Act requires a different result.

In this regard, several parties[57] propose consolidating the Computer III remand proceeding[58] into the present investigation and argue the BOCs should be required to provide ***all*** information services through a separate affiliate. Bell Atlantic would welcome such a consolidation. The record of the remand proceeding demonstrates conclusively that (1) the public has benefited immensely from the ability of the BOCs to provide enhanced services on an integrated basis, (2) the public would be seriously harmed if the BOCs were forced to provide such services on a structurally separated basis, and (3) competition for enhanced services has grown and flourished since the BOCs were granted structural relief, with no evidence that any competitor has been harmed. Based upon that record, the Commission can come to only one conclusion -- that the BOCs' continued unseparated provision of intraLATA information (enhanced) services -- services which the BOCs have offered for nearly a decade -- best serves the public interest.

MFS, in turn, uses this proceeding as yet another opportunity to tout its frivolous claim that Bell Atlantic's new Internet Access Service is an interLATA information service that Bell Atlantic should not be allowed to offer.[59] Bell Atlantic has fully refuted MFS's claims

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57 ***See, e.g.,*** ITAA Comments at 11-12, MCI Comments at 19-20.

58 ***See Computer III Remand Proceedings***, CC Docket No. 95-20, 10 FCC Rcd 8360 (1995).

59 MFS Comments at 19-24. MFS repeats verbatim the failed arguments that it submitted in its "Comments" on its own petition seeking reconsideration of the Commission's approval of Bell Atlantic's CEI plan. ***Bell Atlantic, Offer of Comparably Efficient Interconnection to Providers of Enhanced Internet Access Services,*** 11 FCC Rcd 6919 (1996).

elsewhere.[60] In short, Bell Atlantic does not provide the underlying interLATA transmission service, and is not, as MFS claims, reselling the services of other interLATA providers. On the contrary, any links that cross LATA boundaries are being provided by unaffiliated internet interexchange providers, and the Act requires nothing more. In any event, MFS's specific allegations regarding Bell Atlantic's service should be addressed in the context of other proceedings where they have been fully addressed.

V. Information Services Separation Provisions Can Not Be Applied to Electronic Publishing Services

ITAA asserts that the definition of electronic publishing in Section 274 is so unclear that the Commission should simply impose all of the Section 272 structural separation provisions on electronic publishing.[61] Such a cavalier approach is foreclosed by the express provisions of the Act which specify ***different*** separate affiliate requirements for electronic publishing than for interLATA information services.

First, although the statute applies a general non-discrimination requirement to the relationship between the BOC and the interLATA information services affiliate in the provision of goods, services, facilities or information,[62] it includes no such general requirement in Section 274. Instead, it limits Section 274 nondiscrimination prohibitions to network access and interconnections to basic service. Conversely, the Act prohibits the BOC from supplying certain

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60 ***See Offer of Comparably Efficient Interconnection to Providers of Enhanced Internet*** Services, CCB Pol 96-09, Bell Atlantic's Opposition to Petition for Reconsideration (filed Aug. 9, 1996), Reply of Bell Atlantic (filed Aug. 26, 1996).

61 ITAA Comments at 15-16.

62 47 U.S.C § 272(c).

functions to the electronic publishing separate affiliate, such as hiring, training, purchasing, and installation and maintenance of equipment,[63] but contains no comparable provisions in Section 272. In addition, the joint marketing and auditing provisions of the two sections differ markedly, providing further evidence of Congressional intent that the affiliates operate under different requirements.

Second, contrary to ITAA's contention, the definition of electronic publishing in Section 274 is ***not*** unclear. Congress went to great pains to spell out what services are electronic publishing and what are not. Paragraph (1) of Section 274(h) describes the services included in that definition, and paragraph (2) enumerates 15 exceptions to that general definition. As will be addressed in greater length in upcoming comments in a separate proceeding on this issue, any ambiguities that may remain around the edges are minor and can no way support ITAA's position that the statutory distinctions and the 15 exceptions should be ignored.[64]

VI. BOC Affiliates Enter the Market as Nondominant Providers of Long Distance Service

None of the commentors even attempt to argue that new entrant BOC affiliates will themselves have market power in the ***long distance*** market. Instead they claim that the affiliate's long distance operations should be regulated as dominant because of the supposed market power of the affiliated BOC in the ***local*** market. But subjecting the long distance operations to

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63 47 U.S.C. § 274(b)(7).

64 Bell Atlantic will show in its forthcoming comments in the non-accounting safeguards proceeding, CC Docket No. 96-152, that the Commission can clarify any ambiguities by defining the term "introductory gateway" to include a range of introductory material that does not include the actual content created by the electronic publisher.

dominant treatment does nothing to address this issue. Moreover, as Bell Atlantic demonstrated in its initial comments, such claims ignore the impact of the opening of the local market required by the Act before long distance entry.[65] It also ignores continuing price cap and other regulations that will continue to serve as an effective check on local prices and market power.

Several incumbents argue that even if dominant regulation of the BOC affiliates makes no sense based on any traditional measure of market power, such regulation is needed, nevertheless, as a way of evaluating the rates of the affiliate to be sure that it is properly imputing access charges.[66] The Act, however, already provides for a new biennial audit which is intended to serve specifically as a check on compliance with the section 272 separation requirements, including the imputation requirement.[67] It makes no sense to stifle competition and increase consumer costs through dominant regulation, just to duplicate a safeguard already in place.

Time Warner repeats its arguments that even with pure price cap regulation, which removes any relationship between costs and rates, there is still an incentive for the BOC to cross-subsidize because a shift in costs to the regulated business could impact the level of a future productivity offset.[68] But this argument requires a BOC to risk detection and penalties on the remote hope that, even though there is no direct link between costs and prices today, the Commission may, in some future review, rely on the costs or earnings of the industry as a whole, and that cost shifting by one company would have a significant impact on that evaluation so that a BOC could recoup its cross subsidy losses through smaller year over year price decreases in

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65 Bell Atlantic Comments at 14-20.

66 ***See*** MCI Comments at 65; Comments of LDDS WorldCom at 25 (filed Aug. 15, 1996).

67 ***See*** 47 U.S.C. § 272(d).

68 Time Warner Comments at 12-13.

some uncertain future period. It simply makes no sense or logic to increase the regulatory burden of a BOC affiliate based on such an attenuated scenario.

MCI cites what it claims is a "grim history" of LEC conduct as justification for the more extreme regulation.[69] In reality, the history of Bell company participation in other businesses overwhelmingly shows that competition has flourished. Indeed, as demonstrated in our opening comments, actual market experience provides overwhelming evidence of vibrant competition, not only in enhanced services, but in consumer premises equipment, in cellular, and even in interLATA service where Bell Atlantic participation is permitted today.[70]

While implicitly acknowledging that predatory pricing would be ineffective against the major long distance incumbents, smaller incumbents argue that increased regulation is necessary to offer them special protection.[71] But if predation won't drive out the major competitors, there is no way for a BOC to recoup predatory prices by charging prices above a competitive level. As the D.C. Circuit recognized, "it is hard to see what advantage a BOC could draw from beating

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69 MCI Comments at 67. MCI relies on a single case, the Georgia MemoryCall decision. In that case, which was never adjudicated at the FCC, the Georgia Commission relied on misquoted witnesses and faulty testimony that was corrected later in the record. ***See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services***, CC Docket No. 95-20, Reply Comments of Bell Atlantic at 17-18 (filed May 19, 1995).

70 ***See*** Bell Atlantic Comments at 18-19; ***see also Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services***, CC Docket No. 95-20, Comments of Bell Atlantic at 4-12 (Filed Apr. 7, 1995). In fact, the Commission has recently proposed elimination of reports that monitor potential discrimination in customer premises equipment installation and maintenance. The Commission bases its proposal on a the BOC track record of eight years without a single discrimination complaint. ***Revision of Filing Requirements***, CC Docket No. 96-23, Notice of Proposed Rulemaking, ¶ 7 (rel. Feb. 27, 1996).

71 ***See*** TRA Comments at 26-27.